

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STATE OF OHIO, ex rel. MICHAEL DEWINE,
OHIO ATTORNEY GENERAL,

and

Cleveland-Cuyahoga County Port Authority,

Plaintiffs,

and

ArcelorMittal Cleveland, LLC,

Intervening Plaintiff,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; THE HONORABLE ERIC
FANNING, SECRETARY OF THE UNITED
STATES ARMY; THE HONORABLE JO-
ELLEN DARCY, ASSISTANT SECRETARY
OF THE ARMY FOR CIVIL WORKS;
LIEUTENANT GENERAL TODD
T.SEMONITE, CHIEF OF ENGINEERS AND
COMMANDING GENERAL, UNITED
STATES ARMY CORPS OF ENGINEERS;
BRIGADIER GENERAL MARK TOY,
UNITED STATES ARMY CORPS OF
ENGINEERS, GREAT LAKES AND OHIO
RIVER DIVISION; AND LIEUTENANT
COLONEL ADAM CZEKANSKI, DISTRICT
COMMANDER, UNITED STATES ARMY
CORPS OF ENGINEERS, BUFFALO
DISTRICT,

Defendants.

CASE NO. 1:16-cv-2328

JUDGE DONALD C. NUGENT

**Stipulation and Order of Dismissal
with Prejudice**

WHEREAS Plaintiffs State of Ohio and Cleveland-Cuyahoga County Port Authority (“Plaintiffs”) and Intervening-Plaintiff ArcelorMittal Cleveland, LLC (“Intervening Plaintiff”) allege in their Complaints that Defendants have violated applicable law or regulations in determining that open-lake placement of dredged material in 2016 from the upper sixth mile of the Cuyahoga River Channel (“the Channel”) is suitable;

WHEREAS, on September 22, 2016, Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction, ECF No. 6 (the “TRO Motion”);

WHEREAS, on October 4, 2016, Plaintiffs and Defendants entered into a stipulation resolving the TRO Motion according to terms specified therein, which stipulation was issued as an order of the Court on October 5, 2016, ECF No. 22 (the “October 5, 2016, Stipulation and Order”), and to which Intervening Plaintiff was not a party;

WHEREAS, on October 5, 2016, the Court granted Intervening Plaintiff’s Motion to Intervene, ECF No. 20, and, on October 10, 2016, Intervening Plaintiff filed its Verified Complaint seeking a declaratory judgment and injunctive relief requiring the Defendants to dredge the Channel in 2016, ECF No. 25;

WHEREAS, on May 11, 2017, Plaintiffs and Defendants entered into an additional stipulation according to terms specified therein, which stipulation was filed with the Court on May 11, 2017, ECF No. 48 (the “May 11, 2017, Stipulation and Proposed Order”), and to which Intervening Plaintiff was not a party; and

WHEREAS, Plaintiffs, Intervening Plaintiff, and Defendants wish to avoid further litigation in this case and dismiss the litigation according to the terms specified herein.

NOW, THEREFORE, through their undersigned counsel, Plaintiffs, Intervening Plaintiff, and Defendants hereby stipulate and agree to an Order as follows:

1. Plaintiffs and Intervening Plaintiff hereby dismiss this case with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

2. The dismissal of this action shall not require Plaintiff the State of Ohio, Plaintiff Cleveland-Cuyahoga County Port Authority, or Intervening Plaintiff ArcelorMittal Cleveland, LLC to reimburse the Corps for the additional costs required for confined disposal facility placement of dredged materials from the Channel in 2016 or 2017 that is greater than the amount required for open Lake placement of these dredged materials. The terms of this Stipulation and Order specifically render null and void any obligation of Plaintiff the State of Ohio to make any such payment found in either the May 11, 2017, Stipulation and Proposed Order or the October 5, 2016, Stipulation and Order.

3. This Stipulation and Order is entered solely to resolve this case. This Stipulation does not represent an admission by any Party to any fact, claim, or defense concerning any issue in this or any other case.

4. This Stipulation has no precedential value and shall not be used as evidence by Defendants, Plaintiffs, or Intervening Plaintiff in this case or any other case except as necessary to enforce the terms of this Stipulation and Order.

5. This Stipulation represents the entirety of the Parties' commitments. The terms of this Stipulation and Order shall become effective upon approval by the Court.

IT IS HEREBY AGREED.

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Division

Dated: February 21, 2018

s/ Benjamin R. Carlisle
BENJAMIN R. CARLISLE
s/ Reuben Schifman
REUBEN SCHIFMAN
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20004
(202) 305-4224 - Schifman
(202) 514-9771 - Carlisle
(202) 514-8865 - Facsimile
Reuben.schifman@usdoj.gov

Benjamin.carlisle@usdoj.gov

ALAN D. GREENBERG
U.S. Department of Justice
Environmental Defense Section
999 18th Street, Suite 370
Denver, Colorado 80202
Phone: (303) 844-1366
Fax: (303) 844-1350
E-mail: alan.greenberg@usdoj.gov

JUSTIN E. HERDMAN
United States Attorney
Northern District of Ohio

Erin E. Brizius (#0091364)
Assistant United States Attorney
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3670
(216) 522-4982 - Facsimile
erin.e.brizius2@usdoj.gov

Counsel for all Defendants

Dated: February 21, 2018

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**

S/Dale T. Vitale (per email authorization)
DALE T. VITALE (0021754)
JANEAN R. WEBER (0083960)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Dale.Vitale@OhioAttorneyGeneral.gov
Janean.Weber@OhioAttorneyGeneral.gov

Counsel for Plaintiff, State of Ohio

S/Louis L. McMahon (per email authorization)
LOUIS L. McMAHON (0067378)

KEELY J. O'BRYAN (0071438)
McMAHON DEGULIS LLP
The Caxton Building
812 Huron Road E, Suite 650
Cleveland, Ohio 44115
Telephone: (216) 621-1312
Facsimile: (216) 621-0577
lmcmahon@mdllp.net
kobryan@mdllp.net

*Counsel for Plaintiff,
Cleveland-Cuyahoga County Port Authority*

Dated: February 21, 2018

Sl Joseph P. Koncelik (per email authorization)

ROBERT J. HANNA (0037230)
JOSEPH P. KONCELIK (0061692)
Tucker and Ellis, LLP
950 Main Avenue, Suite 1100
Cleveland, Ohio 44113
216-696-2373 – Koncelik
216-592-5009 – Fax
robert.hanna@tuckerellis.com
joseph.koncelik@tuckerellis.com

*Counsel for Intervening Plaintiff,
ArcelorMittal Cleveland, LLC*

IT IS SO ORDERED.

DONALD C. NUGENT
United States District Judge

DATE _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Stipulation and Order of Dismissal with Prejudice was filed this 21st day of February 2018, through the ECF filing system and will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

s/ Benjamin R. Carlisle
BENJAMIN R. CARLISLE